

# ***WISCONSIN LEGISLATIVE COUNCIL STAFF***

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 98-121**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

### **1. Statutory Authority**

The department’s authority under s. 86.07 (2), Stats., to require permits for connections to state trunk highways or connecting highways should be cited in s. Trans 233.01, which describes the purpose for ch. Trans 233. Chapter Trans 233 specifies minimum standards for subdivisions and other divisions of land that abut state trunk highways or connecting highways. Section Trans 233.01 states that the purpose of ch. Trans 233 is to provide for safe highways and to preserve the public interest and investment in highways “as required by s. 236.13 (1) (e), Stats.” However, s. 236.13 (1) (e), Stats., is only applicable to subdivision plats. The apparent authority for the department to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. This statutory authority should be cited in s. Trans 233.01.

In addition, s. Trans 233.012 states that ch. Trans 233 applies to all land division maps “in accordance with ss. 236.12, 236.34 and 236.45, Stats.” However, ss. 236.34 and 236.45, Stats., do not appear to give the department authority to impose minimum standards for land divisions. Again, it appears that s. 86.07 (2), Stats., which authorizes the department to promulgate rules regulating connections to state trunk highways or connecting highways is the authority for ch. Trans 233, Stats., to apply to land divisions by a certified survey map under s. 236.34, Stats., by local subdivision regulations under s. 236.45, Stats., or by condominium plats under s. 703.11, Stats.

## **2. Form, Style and Placement in Administrative Code**

a. The defined term “certified survey map” in s. Trans 233.015 (1), is not used in ch. Trans 233 and, therefore, may be deleted.

b. It is suggested that the words “involved” and “designed” in s. Trans 233.015 (2), be drafted in the present tense. [See s. 1.01, Manual.]

c. The department should consider whether a definition of “structures” is needed in ch. Trans 233. Section Trans 233.08 (1) provides that no person may erect, install or maintain any structure or improvement within a setback area. Because the definition of “improvement” in s. Trans 233.015 (2) does not include terraces, patios and fences, the question arises whether these may be placed in a setback area. In addition, s. Trans 233.08 (5) requires an owner of land to place a statement on a land division map that says no improvements or structures are allowed between the right-of-way line and the highway setback line, and defines improvements and structures to include “signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls.” Chapter Trans 233 would be more clear if the term “structures” is defined and if the terms “structures” and “improvements” are used consistently.

d. It is suggested that the word “the” be substituted for the word “such” in s. Trans 233.015 (3). [See s. 1.01 (8) (c), Manual.]

e. The department should consider moving the language of s. Trans 233.02 (intro.) to s. Trans 233.01. Section Trans 233.02 (intro.) describes the purpose of ch. Trans 233 and, therefore, more properly belongs in s. Trans 233.01.

f. It is suggested that the term “land division” be substituted for the term “land being subdivided” in s. Trans 233.02 (2) (b). The term “land division” is the term defined in s. Trans 233.015 and use of the term would also make s. Trans 233.02 (2) (b) clearly apply to land divided by certified survey maps or condominium developments.

g. Section Trans 233.05 (6) is explanatory in nature and, therefore, should be placed in a note following s. Trans 233.05. [See s. 1.09 (1), Manual.]

h. In s. Trans 233.105, the phrase “is responsible for abating” should be replaced by the phrase “shall abate.”

## **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The citations in s. Trans 233.02 (4), (5), (6) and (7) should be made more precise. Section Trans 233.02 (4) should reference s. Trans 233.08. Section Trans 233.02 (5) should reference s. Trans 233.105 (3). Section Trans 233.02 (6) should specifically cite the federal noise standards referred to. Section Trans 233.02 (7) should specifically cite the department’s standards for vision corners at intersections and driveways. [See s. 1.07 (1), Manual.]

b. It is suggested that the phrase “in subs. (1) to (8)” be substituted for the phrase “identified below” in s. Trans 233.04 (intro.).

## 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The inclusion of s. Trans 233.03 is confusing. The section provides no direction but merely a recommendation for a procedure. The department either should direct that the procedure be followed or simply include this language in a note to the rule.

b. It is suggested that s. Trans 233.04 clearly state how land division maps are to be submitted to the department for review. If the land division is a subdivision plat required to be reviewed by the department under s. 236.11, Stats., it is clear how this information is to be submitted to the department. However, if the land division is a subdivision regulated under s. 236.45, Stats., or a certified survey map or a condominium, it is not clear how the land division map will be submitted to the department.

c. Section Trans 233.05 appears to contain a contradiction. First, it states that the express consent of the department is required in order for a private road or a driveway to connect with a state trunk highway or a connecting highway or any service road lying partially within the right-of-way of a state trunk highway or a connecting highway. Second, the provision requires a land divider to restrict all lots and blocks so that no owner, possessor, user, licensee or other person has any right of direct vehicular ingress or egress to any highway and does not provide any exception for situations where the department has consented to such a connection. This contradiction should be resolved.

d. Should the term “or connecting highway” be placed before the first comma in s. Trans 233.05 (4) and at the end of s. Trans 233.06 (1)? Also, it appears that the word “to” should be inserted before the phrase “the department’s certification” in the final sentence of s. Trans 233.05 (4).

e. Section Trans 233.105 (1) first states that a **land divider** is responsible for abating noise from existing state trunk highways or connecting highways and then states that the owner must state on the land division map that the lots in the land division may experience noise at levels exceeding federal standards and that **owners of lots** are responsible for abating the noise. Section Trans 233.105 (1) should be more clear concerning who is responsible for noise abatement from state trunk highways or connecting highways.